

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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WILHELMINA NICOMEDEZ,

Plaintiff,

**ANSWER TO COMPLAINT
ON BEHALF OF CITY
DEFENDANTS**

-against-

THE CITY OF NEW YORK, et al.,

19 CV 4470 (RRM) (PK)

Jury Trial Demanded

Defendants.

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Defendants The City of New York, Detective John Petzolt, PO Atkinson, PO Rivas, and Sergeant LaClair (hereinafter referred to collectively as "City Defendants"), by their attorney, Georgia M. Pestana, Acting Corporation Counsel of the City of New York, for their Answer to the Complaint, respectfully allege, upon information and belief, as follows:

AS TO "PRELIMINARY STATEMENT"

1. Deny the allegations set forth in Paragraph "1" of the Complaint, except admit that plaintiff purports to proceed in this action as stated therein.

AS TO "JURISDICTION"

2. Deny the allegations set forth in Paragraph "2" of the Complaint, except admit that plaintiff purports to invoke this Court's jurisdiction as stated therein.

3. Deny the allegations set forth in Paragraph "3" of the Complaint, except admit that plaintiff purports to invoke this Court's supplemental jurisdiction as stated therein.

AS TO "VENUE"

4. Deny the allegations set forth in Paragraph "4" of the Complaint, except admit that plaintiff purports to base venue as stated therein.

AS TO “JURY DEMAND”

5. Paragraph “5” of the Complaint sets forth a request for a jury, for which no response is necessary.

AS TO “PARTIES”

6. Deny knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph “6” of the Complaint.

7. Deny the allegations set forth in Paragraph “7” of the Complaint, except admit that the City of New York is a municipality and it maintains a police department consistent with all applicable rules and laws, and respectfully refer the Court to the New York City Charter and Administrative Code for a recitation of the relationship between the City and its police department

8. Deny knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph “8” of the Complaint,

9. Deny the allegations set forth in Paragraph “9” of the Complaint, except admit that on October 4, 2018, defendant John Petzolt was employed by the City of New York as a detective in the NYPD.

10. Deny the allegations set forth in Paragraph “10” of the Complaint, except admit that on October 4, 2018, defendant Atkinson was employed by the City of New York as a police officer in the NYPD.

11. Deny the allegations set forth in Paragraph “11” of the Complaint, except admit that on October 4, 2018, defendant Rivas was employed by the City of New York as a police officer in the NYPD.

12. Deny the allegations set forth in Paragraph “12” of the Complaint, except admit that on October 4, 2018, defendant LaClair was employed by the City of New York as a sergeant in the NYPD.

13. Deny knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph “13” of the Complaint.

14. Deny knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph “14” of the Complaint.

AS TO ‘FACTS COMMON TO ALL CLAIMS’

15. Deny knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph “15” of the Complaint.

16. Deny knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph “16” of the Complaint, except admit that plaintiff filed complaint against co-defendant Thaddeus Wroblewski.

17. Deny knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph “17” of the Complaint, except admit that plaintiff filed complaint against co-defendant Thaddeus Wroblewski.

18. Deny knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph “18” of the Complaint, except admit that plaintiff filed complaint against co-defendant Thaddeus Wroblewski.

19. Deny knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph “19” of the Complaint.

20. Deny knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph “20” of the Complaint, except admit that plaintiff filed complaint against co-defendant Thaddeus Wroblewski.

21. Deny knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph “21” of the Complaint.

22. Deny knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph “22” of the Complaint.

23. Deny the allegations set forth in Paragraph “23” of the Complaint, except admit that on October 4, 2018, plaintiff was arrested and transported to the 112th Precinct.

24. Deny the allegations set forth in Paragraph “24” of the Complaint, except admit that on October 4, 2018, plaintiff was informed of the basis for her arrest.

25. Deny the allegations set forth in Paragraph “25” of the Complaint, except admit that on October 4, 2018, plaintiff was informed of the basis for her arrest.

26. Deny the allegations set forth in Paragraph “26” of the Complaint, except admit that on October 4, 2018, plaintiff was fingerprinted.

27. Deny the allegations set forth in Paragraph “27” of the Complaint.

28. Deny the allegations set forth in Paragraph “28” of the Complaint.

29. Deny the allegations set forth in Paragraph “29” of the Complaint.

30. Deny the allegations set forth in Paragraph “30” of the Complaint, except admit that plaintiff was transported to Central Booking.

31. Deny knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph “31” of the Complaint.

32. Deny the allegations set forth in Paragraph “32” of the Complaint.

33. Deny the allegations set forth in Paragraph “33” of the Complaint.
34. Deny the allegations set forth in Paragraph “34” of the Complaint.
35. Deny the allegations set forth in Paragraph “35” of the Complaint.
36. Deny the allegations set forth in Paragraph “36” of the Complaint.

AS TO “CLAIM FOR RELIED”

37. In response to the allegations set forth in Paragraph “37” of the Complaint, Defendants repeat and reallege the responses contained within the preceding paragraphs as though fully set forth herein.

38. Deny the allegations set forth in Paragraph “38” of the Complaint.
39. Deny the allegations set forth in Paragraph “39” of the Complaint.
40. Deny the allegations set forth in Paragraph “40” of the Complaint.
41. Deny the allegations set forth in Paragraph “41” of the Complaint.
42. Deny the allegations set forth in Paragraph “42” of the Complaint.
43. Deny the allegations set forth in Paragraph “43” of the Complaint.
44. Deny the allegations set forth in Paragraph “44” of the Complaint.

AS TO “SECOND CLAIM FOR RELIEF”

45. In response to the allegations set forth in Paragraph “45” of the Complaint, Defendants repeat and reallege the responses contained within the preceding paragraphs as though fully set forth herein.

46. Deny the allegations set forth in Paragraph “46” of the Complaint.
47. Deny the allegations set forth in Paragraph “47” of the Complaint.
48. Deny the allegations set forth in Paragraph “48” of the Complaint.

AS TO “THIRD CLAIM FOR RELIEF”

49. In response to the allegations set forth in Paragraph “49” of the Complaint, Defendants repeat and reallege the responses contained within the preceding paragraphs as though fully set forth herein.

50. Deny the allegations set forth in Paragraph “50” of the Complaint.
51. Deny the allegations set forth in Paragraph “51” of the Complaint.
52. Deny the allegations set forth in Paragraph “52” of the Complaint.
53. Deny the allegations set forth in Paragraph “53” of the Complaint.
54. Deny the allegations set forth in Paragraph “54” of the Complaint.

AS TO “FOURTH CLAIM FOR RELIEF”

55. In response to the allegations set forth in Paragraph “55” of the Complaint, Defendants repeat and reallege the responses contained within the preceding paragraphs as though fully set forth herein.

56. Deny the allegations set forth in Paragraph “56” of the Complaint.
57. Deny the allegations set forth in Paragraph “57” of the Complaint.

AS TO “FIFTH CLAIM FOR RELIEF”

58. In response to the allegations set forth in Paragraph “58” of the Complaint, Defendants repeat and reallege the responses contained within the preceding paragraphs as though fully set forth herein.

59. Deny the allegations set forth in Paragraph “59” of the Complaint.
60. Deny the allegations set forth in Paragraph “60” of the Complaint.

AS TO “SIXTH CLAIM FOR RELIEF”

61. In response to the allegations set forth in Paragraph “61” of the Complaint, Defendants repeat and reallege the responses contained within the preceding paragraphs as though fully set forth herein.

62. Deny knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph “62” of the Complaint.

63. Admit the allegations set forth in Paragraph “63” of the Complaint.

64. Deny the allegations set forth in Paragraph “64” of the Complaint.

65. Deny the allegations set forth in Paragraph “65” of the Complaint.

66. Deny the allegations set forth in Paragraph “66” of the Complaint.

67. Deny the allegations set forth in Paragraph “67” of the Complaint.

68. Deny the allegations set forth in Paragraph “68” of the Complaint.

69. Deny the allegations set forth in Paragraph “69” of the Complaint.

70. Deny the allegations set forth in Paragraph “70” of the Complaint.

71. Deny the allegations set forth in Paragraph “71” of the Complaint.

72. Deny the allegations set forth in Paragraph “72” of the Complaint.

73. Deny the allegations set forth in Paragraph “73” of the Complaint.

74. Deny the allegations set forth in Paragraph “74” of the Complaint.

AS TO “SEVENTH CLAIM FOR RELIEF”

75. In response to the allegations set forth in Paragraph “75” of the Complaint, Defendants repeat and reallege the responses contained within the preceding paragraphs as though fully set forth herein.

76. Deny the allegations set forth in Paragraph “76” of the Complaint.

77. Deny the allegations set forth in Paragraph “77” of the Complaint.
78. Deny the allegations set forth in Paragraph “78” of the Complaint.
79. Deny the allegations set forth in Paragraph “79” of the Complaint.

AS TO “EIGHTH CLAIM FOR RELIEF”

80. In response to the allegations set forth in Paragraph “80” of the Complaint, Defendants repeat and reallege the responses contained within the preceding paragraphs as though fully set forth herein.

81. Deny the allegations set forth in Paragraph “81” of the Complaint.
82. Deny the allegations set forth in Paragraph “82” of the Complaint.
83. Deny the allegations set forth in Paragraph “83” of the Complaint.
84. Deny the allegations set forth in Paragraph “84” of the Complaint.
85. Deny the allegations set forth in Paragraph “85” of the Complaint.
86. Deny the allegations set forth in Paragraph “86” of the Complaint.
87. Deny the allegations set forth in Paragraph “87” of the Complaint.

AS TO “NINTH CLAIM FOR RELIEF”

88. In response to the allegations set forth in Paragraph “88” of the Complaint, Defendants repeat and reallege the responses contained within the preceding paragraphs as though fully set forth herein.

89. Deny the allegations set forth in Paragraph “89” of the Complaint.
90. Deny the allegations set forth in Paragraph “90” of the Complaint.
91. Deny the allegations set forth in Paragraph “91” of the Complaint.
92. Deny the allegations set forth in Paragraph “92” of the Complaint.
93. Deny the allegations set forth in Paragraph “93” of the Complaint.

94. Deny the allegations set forth in Paragraph “94” of the Complaint.
95. Deny the allegations set forth in Paragraph “95” of the Complaint.

AS TO “TENTH CLAIM FOR RELIEF”

96. In response to the allegations set forth in Paragraph “96” of the Complaint, Defendants repeat and reallege the responses contained within the preceding paragraphs as though fully set forth herein.

97. Deny the allegations set forth in Paragraph “97” of the Complaint.
98. Deny the allegations set forth in Paragraph “98” of the Complaint.
99. Deny the allegations set forth in Paragraph “99” of the Complaint.
100. Deny the allegations set forth in Paragraph “100” of the Complaint.
101. Deny the allegations set forth in Paragraph “101” of the Complaint.

AS TO “ELEVENTH CLAIM FOR RELIEF”

102. In response to the allegations set forth in Paragraph “102” of the Complaint, Defendants repeat and reallege the responses contained within the preceding paragraphs as though fully set forth herein.

103. Deny the allegations set forth in Paragraph “103” of the Complaint.
104. Deny the allegations set forth in Paragraph “104” of the Complaint.
105. Deny the allegations set forth in Paragraph “105” of the Complaint.

AS TO “TWELFTH CLAIM FOR RELIEF”

106. In response to the allegations set forth in Paragraph “106” of the Complaint, Defendants repeat and reallege the responses contained within the preceding paragraphs as though fully set forth herein.

107. Deny the allegations set forth in Paragraph “107” of the Complaint.

108. Deny the allegations set forth in Paragraph “108” of the Complaint.
109. Deny the allegations set forth in Paragraph “109” of the Complaint.
110. Deny the allegations set forth in Paragraph “110” of the Complaint.
111. Deny the allegations set forth in Paragraph “111” of the Complaint.
112. Deny the allegations set forth in Paragraph “111” of the Complaint.
113. Deny the allegations set forth in Paragraph “113” of the Complaint.

AS TO “THIRTEENTH CLAIM FOR RELIEF”

114. In response to the allegations set forth in Paragraph “114” of the Complaint, Defendants repeat and reallege the responses contained within the preceding paragraphs as though fully set forth herein.

115. Deny the allegations set forth in Paragraph “115” of the Complaint.
116. Deny the allegations set forth in Paragraph “116” of the Complaint.
117. Deny the allegations set forth in Paragraph “117” of the Complaint.
118. Deny the allegations set forth in Paragraph “118” of the Complaint.
119. Deny the allegations set forth in Paragraph “119” of the Complaint.

AFFIRMATIVE DEFENSES

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

120. The Complaint fails to state a claim upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

121. Defendants have not violated any rights, privileges or immunities under the Constitution or laws of the United States or the State of New York or any political subdivision thereof, nor have they violated any Act of Congress providing for the protection of civil rights.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

122. Any injury alleged to have been sustained resulted from plaintiff's own culpable or negligent conduct, and/or the intervening culpable or negligent conduct of others, and was not the proximate result of any act of Defendants.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

123. Plaintiff cannot obtain punitive damages as against the City of New York.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

124. There was probable cause for plaintiff's arrest, detention, and prosecution.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

125. There was reasonable suspicion and/or probable cause for any stop, seizure and/or search.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

126. At all times relevant to the acts alleged in the Complaint, defendant City of New York, its agents and officials, acted reasonably and properly in the lawful exercise of their discretion. Therefore, defendant City of New York is entitled to governmental immunity from liability.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

127. Defendant officers have not violated any clearly established constitutional or statutory rights of which a reasonable person would have known and therefore are protected by qualified immunity.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

128. At all times relevant to the acts alleged in the Complaint, Defendant officers acted reasonably and in the proper and lawful exercise of their discretion.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

129. Plaintiff failed to mitigate his damages.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

130. To the extent plaintiff alleges claims under State law, said claims may be barred, in whole or in part, because plaintiff has failed to comply with the conditions precedent to suit.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

131. To the extent plaintiff alleges claims under State law, said claims may be barred in whole or in part by the doctrine of immunity from judgmental errors in the exercise of governmental functions.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

132. Defendant officers may be entitled to absolute immunity on some of plaintiff's claims.

AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE

133. To the extent that one or more defendants used any force, it was reasonable, justified, and necessary to accomplish Defendants' official duties and to protect their own physical safety and the safety of others.

AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE

134. Plaintiff's claims are barred, in whole or in part, by his own contributory and comparative negligence and by assumption of risk.

WHEREFORE, defendants The City of New York, Detective John Petzolt, PO Atkinson, PO Rivas, and Sergeant LaClair request judgment dismissing the Complaint in its entirety, together with the costs and disbursements of this action, and such other and further relief as the Court may deem just and proper.

Dated: New York, New York
 October 25, 2019

ZACHARY W. CARTER
Corporation Counsel of the City of New York
Attorney for Defendants

/s/

By: _____

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